

(1997) 11 MAD CK 0162
In the Madras High Court
Case No : Appeal No. 293/84

Chinnasami and 6 others

APPELLANT

Vs

Balasubramanian (since deceased) and The Commissioner,
Hindu Religious and Charitable Endowments Administration,
Nungambakkam High Road, Madras, The Executive Officer,
Namakkal and Periyamma and others

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (1997) 11 MAD CK 0162

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R. Subramanian for Mr. V. Krishnan, for the Appellant; R. Balasubramaniam (Spl) Government Pleader on behalf of the Respondents. 2 and 3, Mr. N. Varadarajan for Mr. T.K. Subbarao, advocate for the Respondents 4 to 7, for the Respondent

Judgement

P. Sathasivam, J.—Defendants 1 to 3 in O.S. 63/80 on the file of Subordinate Judge, Namakkal are the appellants in the above appeal. The first respondent herein (since deceased) has filed the said suit, 1 to declare that the suit temple is not a public temple; 2 holding that the plaintiff is the hereditary trustee of the suit temple; 3 setting aside the order of the fourth defendant dt.10.3.75 in A.P.6/75 by which the order of the Deputy Commissioner, H.R. & C.E. Coimbatore dt.20.9.73 in O.A.63/72 and the order of the Assistant Commissioner, Salem, dt.28.4.72 appointing the defendants 1 to 3 as the non-hereditary trustees to the suit temple have been wrongly confirmed, and 4 directing the defendants to pay the plaintiff the costs of the suit.

2. The case of the plaintiff is briefly stated hereunder :-

According to him the temple by name Vallaba Vinayakar Koil in Kuchipalayam, Pandamangalam Village, Namakkal Taluk Salem District is a private temple,

belonging to the family of the plaintiff built in the year 1638 by the ancestor Munia Kandar son of Sellandi Kandar on his own lands. The temple and the Nandavanam immediately adjoining on the north and the lands given to the temple are situated in S.No. 225/1 and also in Survey No.258 and also in Survey No.240/2. The temple and Nandavanam are in Survey No.225/1. The inscriptions on the stones of the temple also reveal the date of the temple and the name of Munia Kandar. It is contended that the temple has all along been managed by the plaintiffs family hereditarily. From time to time the members of the plaintiffs family in a meeting assembled appointed one of them as manager for managing the affairs of the temple and another is treasurer. Thus on 6.11.37 one Pattakkar Kandar was appointed as Manager and one Kenemari Sellandi Kandar as Treasurer and on 2.3.61 the then members of the plaintiff's family appointed the same person as manager and one Nallathambi Kandar as Treasurer. Both the appointments were under registered documents. The expenses of the worship of the temple and of the repairs etc, to the temple were exclusively met only by the plaintiffs family and at no time did any member of the public contribute any amount towards such expenses. The public as such has no right of worship at the temple. Nor did any member of the public meet any part of the expenses or give any fund or property for the maintenance of the temple. The temple has all along been under the exclusive control and management of the plaintiffs family and nobody else has any right to interfere with the management and none else had any right to interfere with the management. It is further contended that at a meeting dt.11.11.69 the present plaintiff was appointed as manager to manage the temple and one Katha Kandar was appointed as treasurer. The managers so appointed from time to time are hereditary trustees within the meaning of section 6(2)(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred to as "the Act"). While such is the position the Assistant Commissioner, H.R.&C.E., Salem by his order dt.28.4.72 appointed the defendants 1 to 3 herein as the non-hereditary trustees of the temple and in the circumstances, the plaintiff was obliged to file O.A.63/73 on the file of the Deputy Commissioner, Coimbatore for a declaration that the suit institution is not a temple within meaning of the Act. By an order dt.20.9.73 the Deputy Commissioner, dismissed the said application. Aggrieved by the said order, the plaintiff filed an appeal to the Commissioner, H.R. & C.E. Madras, the fourth defendant in Appeal petition 6/75 dt.10.3.75. The fourth defendant has also dismissed the said Appeal on 8.4.75 confirming the order of the Deputy Commissioner which insisted the plaintiff to file the present suit to set aside the abovesaid orders. It is also contended that the suit temple has been all along in exclusive possession and maintenance of the plaintiff and his ancestors only. It is not a public temple.

3. The third defendant filed written-statement wherein it is contended that the said Vallaba Vinayagar Temple at Kuchipalayam, in Pandamangalam is not a private temple. Not a scrap of paper has been produced to show that the temple was built by one Munia Kandar son of Sellandi Kandar. There is no proof to show

that how they are related to the plaintiff. No genealogy has been filed to trace the relationship of the plaintiff and the said Munia Kandar. The temple is situated in Nandavanam and it is a temple poromboke and is also a village site Natham Poromboke. The plaintiff must prove that the general body appointed the Managing trustee all these years. The document dt.6.11.36 does not advance the case of the plaintiff any further. It is also contended that after the death of Pattakkar Kandar the third defendant was selected as Manager of the temple. Further, the plaintiff is not so rich enough to spend money towards expenses of the temple. The public had always control over the management and affairs of the temple. A reading of the document dt.6.11.36 would clearly prove that public have got every right towards, the management of the temple and its affairs. The documents that have been produced on the side of the plaintiff are self serving documents and got up for the purpose of the suit. The Deputy Commissioner has correctly appreciated the case and rightly dismissed the application of the plaintiff which has also been dismissed by the Commissioner. The temple is already under the jurisdiction of the Department and hence the petition u/s 63 (a) of the Act is not maintainable. With these averments he prayed for dismissal of the suit.

4. The fourth defendant has filed separate written-statement reiterating the orders" passed by the Deputy Commissioner and the Commissioner, H.R. & C.E. Department. It is also contended that the suit temple is in Nathamporomboke and the same is being worshipped by the public. The suit temple has got all characteristic of a public temple.

5. The plaintiff examined himself as P.W.1 and he has also examined two witnesses on his side, that is, one Chellappa Kandar and Kanagasabapathy Kandar, as P.Ws.2 and 3, respectively. Exhibits A-1 to A-15 were marked on the side of the plaintiff. The third defendant was examined as P.W.1 and has also marked Exhibits B1 to B3 in support of their defence, Learned Subordinate Judge, after framing necessary issues, after accepting the case of plaintiff, decreed the suit as prayed for with costs. Aggrieved against the decree of the trial court, the defendants 1 to 3 have filed the above appeal.

6. I have heard Mr. R. Subramanian, learned counsel appearing for the Appellants and Mr. N. Varadarajan, learned counsel appearing for the respondents 4 to 7 and the Special Government Pleader for respondents 2 and 3.

7. Learned counsel for the Appellants submitted that the evidence let in by the plaintiff does not show that he has fulfilled the conditions prescribed u/s 6(11) of the Act. He also contended that there is no acceptable evidence to hold that the suit temple is not a public temple. He further submitted that in as much as the plaintiff has not laid the suit in a representative capacity in the light of the claim and evidence, the court below ought to have dismissed the same. In support of the above contentions he has relied on the following decisions:-

1. Tholappa Iyengar @ Alagar Iyengar v. Executive Officer, Sri Kallalagar

Devasthanam (1993(2) L.W. 537)

2. M. Lakshmiammal and Others Vs. K.T.T. Ramalingam Chettiar and Another,

3. Seeni Thevar and Others Vs. M.S. Velayutha Raja and Another,

4. Ramiah Konar Vs. The Commissioner, H.R. and C.E. (A) Department and Another, and

5. Appusamy Vs. A.V. Sundararajan and Others,

8. On the other hand learned counsel appearing for the contesting respondents, after taking me through the pleadings and evidence, contended that the suit as laid by the plaintiff is maintainable and in the light of the oral and documentary evidence, the Court below has rightly granted decree by pointing out the oral and documentary evidence adduced by the plaintiff. He contended that the court below has rightly granted decree as claimed by the plaintiff. He also very much relied on the following decisions:-

1. Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others,

2. Thanumalayaperumal Mudaliar and others v. The Commissioner, H.R.&C.E. Madras and others (1875 TLNJ, 207) and,

3. Some of the passages in Mullah's, Hindu Law.

9. I have considered the rival submissions. Before going into the merits of the parties, I shall refer the following passage of the decisions of the Apex Court in T.V. Mahalinga Iyer Vs. State of Madras and Another, which has been referred in Tholappa Jyengar etc. v. Executive Officer, Sri Kallalagar Devasthanam etc and 7 others (1993(2) L.W. 537)

"It is undisputed law that so far as Tamil Nadu is concerned, there is an initial presumption that a temple is a public one, it being upto the party who claims that it is a private temple, to establish that fact affirmatively. Of course, this initial presumption must be rebutted by clinching testimony and the crucial question is as to whether the public worship in the temple is of right. Ordinarily, there may not be direct evidence regarding the exercise of such right and inference has to be drawn from a wealth of circumstances"

In view of the above statement of law made by the Apex Court, reiterated by the Division Bench in the said decision, now I shall consider whether the plaintiff has established his case.

10. It is the definite case of the plaintiff that the suit temple, namely Vallabu Vinayagar Temple in Kuchilipalayam Pandamangalam, Namakkal Taluk, Salem District, is a private temple belonging to then-family built in the year 1638 by their ancestor Munia Kandar, son of Sellandi Kandar. It is also pleaded that the said temple has all along been managed only by the plaintiffs family hereditarily. From time to time the members of the plaintiffs family in a meeting assembled, appointed one of them as manager for managing the affairs of the temple and

another as a treasurer. It is also pleaded that the expenses of the worship of the temple were exclusively met by the plaintiffs family and at no time did the one contribute any amount towards such expenses. The public, as such, have no right of worship at the temple. In order to succeed the plaintiff must satisfy and fulfill the condition made in Section 6(11) of the Act deals with hereditary trustee. It says as follows:-

"hereditary trustee" means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specially provided for by the founder, so long as such scheme of succession is in force"

Section 6(18) says;

"religious institution" means a math, temple or specific endowment;

Section 6(2) defines temple as follows: -

""temple" means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by the Hindu Community or any Section thereof, as a place of public religious worship":

In the plaint it is specifically pleaded that the managers so appointed from time to time are hereditary trustees within the meaning of Section 6(2)(11) of the Act. The Plaintiff as P.W.1 has deposed thus:-

He has further disposed as follows:-

In the cross-examination he has also deposed as follows:-

P.W.2. He is aged about 79. He is residing at Kuchilipalayam. In the chief examination he has deposed as follows:-

Another witness by name Kanagasabapathy was examined as P.W.3. He is aged about 79. He is residing at Kuchilipalayam. He has deposed as follows:-

Apart from the above mentioned oral evidence, the plaintiff has marked documents Exx.-1 to -15. Exx.-1 to A-3 are photographs with reference to the suit temple. The perusal of Ex.A-2 photo shows that there is an inscription by mentioning Munia Kandar's name in the temple. Ex.A.4 dated 6.11.1936 is an agreement executed by Pattakkarar Kandar, and others, plaintiffs father is the Pattakkara Kandar Ex.A.5 dated 7.11.1969 is the Minutes book relating to the said temple and Ex.A.6 is dated 11.4.1928 the account book. Apart from the above documents, Ex.A.13 is relevant which is dated 24.5.1938. Ex.-13 is an Invitation Card for "Kumbabishegam" of Sri Vallaba Vinayaga. temple. In that card the name of the plaintiff as well as the third defendant are mentioned. Ex.A.14 is dated 6.11.1936 is another agreement relating to Pattakara Kandar and vagayara. Ex.A.15 dated 12.3.1961 is another agreement executed by Pattakara Kandar and vagaiyaras. Ex.-15 is similar to Ex.A.14.

11. The third defendant in his written statement has pleaded that no genealogy

had been filed to trace the relationship between the plaintiff and the said Munia Kandar. It is also the contention that the public had always control over the management and the affairs of the temple. The third defendant was examined as D.W.1 in his chief examination has deposed.

In cross examination he admitted that in Ex.A.4 he had signed. He has also admitted that his name finds a place in Ex.A.13. He further admitted that he acted as a manager in the suit temple. The same has been mentioned in Exhibit A.5. He further admitted that:

A perusal of Exhibits A-1 to A-3 particularly A.2 A.4, A.5, A6, and A.13 coupled with the oral evidence of P.W.s 1 to 3 clearly support the case of the plaintiff. Even though learned counsel for the appellants contended that the relief sought for by the plaintiff or the prayer in the plaint is not in the proper form and not maintainable in view of the provisions of Section 63 of the Act, I am of the view that the relief sought for by the plaintiff is in order. As stated earlier, a perusal of the oral and documentary evidence adduced on the side of the plaintiffs clearly show that he has discharged the initial presumption as pointed in the Division Bench Judgment reported in 1993 (2) L.W. 537, i.e., in Tholappa Iyengar's case. The other decision referred by the learned counsel for the appellant is M. Lakshmiammal and Others Vs. K.T.T. Ramalingam Chettiar and Another, In the said decision learned Judge has observed that

".....in South India, excepting Malabar, it is well established now by Court decisions that the presumption is that a temple is a public one and whoever claims the temple to be a private one he must have to prove it."

I have already extracted the view held by the Apex Court and which has been followed by this Court 1993 (2) L.W. 537. The same view has been reiterated in Seeni Thevar and Others Vs. M.S. Velayutha Raja and Another, also. As stated earlier, absolutely there is no doubt that apart from the above proposition of law, the plaintiff who has approached the Court has to prove his case by acceptable evidence. I have already concluded that the plaintiff has established his case by placing reliance both oral and documentary evidence.

12. Relying on the decision of this Court reported in Ramiah Konar Vs. The Commissioner, H.R. and C.E. (A) Department and Another, learned counsel for the Appellants contended that since the plaintiff has not filed the suit under Order 1, Rule 8 of Code of Civil Procedure, the Court below ought to have dismissed the same. After going through the necessary averments in the plaint as well as the evidence let in by the plaintiffs, I am unable to accept the argument advanced by learned counsel for the appellants. It is not the case of the plaintiff that he is claiming right in a representative capacity. Hence, the said decision referred to by the learned counsel for the Appellants is not helpful to him.

13. The other decision referred to by learned counsel for the Appellants is reported in the case of Appusamy Vs. A.V. Sundararajan and Others, In that

case, the learned Judge, on the facts of that case, had observed that the plaintiff's father was admittedly appointed as "Dharmakartha" of the temple by the H.R.&C.E. authorities. As Dharmakartha he was entitled to correspond with the Department and also manage the temple. Once he is appointed by the H.R.&C.E. authorities, law presumes that he was appointed by the authorities, in exercise of their powers under the Act and that it is a "public temple". In this regard the evidence of P.W.3 is relevant, namely, that the Officer of the H.R.&C.E., Department has perused the records and put his signature in Ex.A.6 at page 33. It is true that PAV.3 in Cross examination has deposed as follows:-

It is true that in Ex.A.6 at page 33 there is the signature of the officer of H.R.&C.E. Department. Except the abovementioned signature at one place in Ex.A.6, no other material was placed before the Court to show the management of the plaintiff or his forefathers were managed or interfered by the officer of the H.R.&C.E., Department. In the absence of any other material or corroborative evidence, it is not possible to reject the case of the plaintiff on the solitary reference made in Ex.A.6.

14. Learned counsel for the respondents 4 to 7, apart from the factual position, has very much relied on the decision of the Apex Court reported in *Goswami Shri Mahalaxmi Vahuji Vs. Ranchhoddas Kalidas and Others*, The Apex Court in the said decision has fixed the guidelines to ascertain whether a particular temple is a private or public temple. Following the passage in the judgment is very relevant and the same is extracted hereunder:-

"Though most of the present day Hindu public temples have been founded as "public temples, there are instances of private temples becoming public temples in course of time. Some of the private temples have acquired great deal of religious reputation either because of the eminence of its founder or because of other circumstances. They have attracted number of devotees. Gradually in course of time they have become public temples. Public Temples are generally built or raised by the public and the deity installed to enable the members of the public or a Section thereof to offer worship. In such a case the temple would clearly be a public temple. If a temple is proved to have originated as a public temple, nothing more is necessary to be proved to show that it is a public temple but if a temple is proved to have originated as a private temple or its origin is unknown or lost in antiquity then there must be proof to show that it is being used as a public temple. In such cases the true character of the particular temple is decided on the basis of various circumstances. In those cases the courts have to address themselves to various questions such as

"1) Is the temple built in such imposing manner that it may prima facie appear to be a public temple?

2) Are the members of the public entitled to worship in that temple as of right?

3) Are the temple expenses met from the contributions made by the public? 4)

Whether the sevās and utsavās conducted in the temple are those usually

conducted in the public temples? 5) Have the management as well as the devotees been treating that temple as a public temple?"

In the light of five question fixed by Supreme Court in the above referred to decision, I am of the view that the evidence let in by the plaintiff satisfies those tests and I am in agreement with the conclusion arrived at by the learned trial Judge.

Learned counsel for the respondents has also relied on the decision of *Thanumalaya Perumal Mudaliar and others v. The Commissioner H.R. & C.E., Madras and others* (1975 T.L.NJ.207). The following conclusion of their Lordships of the said Division Bench is also relied on. Hence, they are extracted below:

"There is unimpeachable evidence in this case that all the properties standing in the name of the deities were provided with funds of the Periaveetu Mudaliar community. The fact that at one particular point of time a small extent of two acres and odd was additionally granted to the deity by some strangers cannot alter the nature of the initial grant of the character of the institution from a private one to a public one. No sasanam has been produced. No deed of dedication has been marked and the Court is yet to know the circumstances under which the strangers dedicated such properties. No nexus has been established between the so-called endowments and the properties of the Temple. Utsavamurthies are not taken in procession. There is no gopuram. There is proof of Astabandana Prathishta having been made by the ancestors. There is no external indicia which is ordinarily present in public temples in South India. The compound wall is not to be equated to a prakaram. There were no worshipers at the time when the Deeparadhana was done. Excepting the representative of the Commissioner and the two Inspectors, there is no proof that any member of the public participated in it. No independent witness or member of the public has come to say that he was visiting the temple as of right and performing the poojas pursuant thereto. The mere presence of the worshipers on certain occasions by itself is not conclusive to show that the generality of the public were having ingress into the temple as of right. Though there is no express dedication, the passage of time and the course of conduct of the members of the family have clearly established that it is was the Periaveettu Mudaliar of AI with private funds, consecrated the idols and built the temple and its surroundings and endowed properties in the name of the deity. The defendants wanted to fish out information by asking the plaintiffs to produce account books relating to the temple. If a person alleges that a particular religious indication is a public temple, it is for him to establish it. The plaintiffs allege that it is a private temple and that they have fairly established by reasonable oral and documentary evidence that it is such an institution. The defendants have failed to discharge the onus of proof. When they wanted the plaintiffs to produce the account books, they were fishing for information, as they were not armed with material to discharge the burden of proof, which is on them. Having regard to the essential principles which should govern the facts while rendering a decision whether a

religious institution or a temple is a public or a private temple, the Court is not satisfied that in the instant case the defendants have produced such clinching and acceptable material which should prompt the Court to hold that the temple is a public one."

By applying the said principles to our case. as stated earlier, I am satisfied that the plaintiff has established his case. All the witnesses P.Ws. 1 to 3 deposed that the suit temple was constructed by the plaintiffs forefather, namely, Muniakandar. P.Ws. 2 and 3 are aged about 79. with regard to the evidence that the suit temple was constructed by Munia Kandar, the inscription found in Ex.A.2 proves the same. As requested I have carefully perused Ex.A.2 by close scrutiny of the said document it shows that there is an inscription in the suit temple mentioning the name of Munia Kandar. P.Ws-2 and 3 deposed that one Pattakarar was in charge of the management of the suit temple. The said Pattakkara Kandar is the father of the plaintiff. P.W.3's a headman of the village (Pannakkarar). He also deposed that there is a in the suit temple wherein the name of Mari, Munia Kandar is inscribed. The evidence let in on the side of the plaintiff is also clear that there is only on some occasions that some of the public come and offer worship. As observed by their Lordships in the Division Bench cited supra (1995 TLNJ 207) mere presence of worshipers, on certain occasion is not conclusive to hold that the public is having interest in the temple as of right. I have already observed that apart from the oral evidence, the documentary evidence adduced by the plaintiff, that is, A.2, A.4, A.5, A.6, 13 and A.15 support the case of the plaintiff, I am satisfied that he has fairly established by reasonable oral and documentary evidence. The contesting defendants have failed to discharge the onus of proof.

Under these circumstances, I am in entire agreement with the conclusion arrived at by the Court below and consequently the appeal fails and the same is dismissed with costs of the contesting respondents.